

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
 Petition of the Community Broadcasters)
 Association for Establishment of a)
 "Class A" Television Service)

RM-9260**RECEIVED**

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: The Commission - Mail Stop 1170

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA"), the petitioner in the above-captioned proceeding, hereby files its reply comments. CBA is the trade association of the nation's low power television ("LPTV") stations.

Showing of Support by LPTV Operators

2. The outpouring of comments from a large number of LPTV operators establishes more clearly than anything else could that a formal rule making is necessary at this time to provide a stable future for the LPTV industry. The only opposition has come from the predictable large broadcast organizations and a few of their members, who have no reason or incentive to promote whatever additional competition that the LPTV industry may offer or to tolerate any inconvenience to accommodate more service to the public, and who are quick to seize on what they style as an overwhelming problem of transition to digital TV ("DTV") as an excuse for freezing the TV spectrum *status quo* without regard to the need for or benefit from change. CBA is heartened, however, that established broadcast interests are finally beginning to realize that special consideration is appropriate for LPTV stations.^{1/} Thus the primary

^{1/} See Comments of National Association of Broadcasters ("NAB") at p. 4, fn. 16. Comments of the Association for Maximum Service Television, Inc. ("MSTV"), at p. 11, fn. 32.

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disagreement between CBA and opponents at this point is only when, rather than whether, the Commission should act. The answer is that the Commission should act now.

3. The initial comments demonstrate what the LPTV industry is doing today -- filling important gaps in service to other than mass audiences in large markets, gaps that are widening as ownership of the full power broadcasting industry rapidly consolidates. LPTV stations represent local ownership; widely diversified ownership; more existing, and more realistic opportunities for, minority, female, and small business ownership and management than in any other mass medium; an emphasis on local and specialized (including minority-oriented) programming; substantial amounts of local news, public affairs, and coverage of governmental and political activities; owner investment; job creation rather than "efficiencies," which translate into job elimination; the fastest growth of any mass medium; and reasonable advertising rates that provide a realistic outlet for small and local businesses seeking to convey their messages to the public. Every one of these characteristics and achievements is an element the Commission has sought to promote throughout virtually all of its 54-year history, modern "de-regulation" notwithstanding. The services provided by LPTV stations cannot be reasonably ignored, unless the Commission is ready to give up the public interest standard altogether.

4. It is to be expected that not everyone will agree on all the details of how to address LPTV issues and how stations providing substantial service to the public should be preserved. Diversity of opinion is what makes our nation strong. However, disagreements among LPTV and translator operators are only details and do not detract from widespread concurrence in the general principle at stake and the need for the Commission to act. They are not a reason to withhold initiating a formal rule making but rather demonstrate the high intensity of interest in

the subject matter, which is an affirmative reason for a rule making -- and a reason to proceed promptly, while there is still an LPTV industry to save.

Objections to Proposal

5. CBA will first address objections raised by opponents of any rule making and will then turn to issues raised by LPTV commenters which will have to be resolved in the rule making.

6. LPTV Stations Are "Secondary". The primary opposing arguments have been heard before -- that LPTV operators knew they were "secondary" when they obtained their licenses, and any elevated status for LPTV stations now would disrupt the complex transition to DTV. The first argument is getting old and tired. Many new and important services began at the bottom of the priority ladder. Indeed, many early translators -- a service which full power commercial and public broadcasters consider more important than program-originating LPTV^{2/} -- began operating not secondarily, but illegally, by people in small communities who had no other way to receive over-the-air television service. That was not a reason for the Commission not to authorize the service on a regular basis after its need and value had been established. Likewise, the initial spectrum rules governing LPTV are no reason not to upgrade the service when its value and performance have been proven notwithstanding the fact that secondary status has curtailed growth by making most conventional financing unavailable, and entrepreneurs have had to risk their personal life savings to meet an important public need.

7. Complicating the DTV Transition. The argument that granting permanent status to some LPTV stations will complicate the transition to DTV is a red herring. Even though fewer

^{2/} See, e.g., NAB Comments at p. 5.

LPTV stations may survive as a result, CBA has stated from the outset that it does not propose that Class A stations infringe on any authorized full power analog or DTV station, including the DTV allotments made in the *Memorandum Opinion and Order Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268.^{3/} CBA is not urging that protection be given to only those NTSC stations that have filed their Form 301 for DTV service,^{4/} so there should be no "race" to file DTV applications that MSTV speculates might occur.^{5/} The only *bona fide* issue to be debated is whether Class A stations should be required to yield to facilities increases by DTV stations, including those seeking to match the coverage of the station in their market with the largest service area. There is no doubt that NAB and MSTV, as well as other full power interests, will say "yes"; but CBA respectfully disagrees and believes that the Commission should revisit the matching issue. The NTSC TV Table of Allotments^{6/} was constructed based on assumed operation with maximum power and antenna height by every station, and every existing station has had an opportunity to apply for maximum facilities. If some licensees have not previously applied for full power and/or height, it is because each has made an economic decision that its current mode of operation is optimum. The transition to digital operation should not change the economic considerations at play; and even if it does for some operators, CBA submits that the benefit of authorizing more power than stations have elected to request in the

^{3/} FCC 98-24, released Feb. 23, 1998. Most of the allotments made in that proceeding are more than "vacant" allotments. They have actually been assigned to specific NTSC stations, except for any digital allotments that may have been paired with vacant noncommercial reserved NTSC allotments.

^{4/} See MSTV Comments at p. 5.

^{5/} MSTV Comments at p. 7.

^{6/} Section 73.606(b) of the Commission's Rules.

past does not justify silencing local and specialized LPTV services that full power stations do not provide. Again, however, this is an issue to be debated and resolved through the formal rule making process and not a reason not to proceed with a *Notice of Proposed Rule Making*.

8. Definition of Interference. CBA has proposed that Class A stations be regulated under Part 73 of the Commission's Rules and Regulations and be subject to all of the same interference standards applicable to other stations under that Part. That proposal eliminates any concern over new kinds of interference to full power analog or DTV stations or interference to non-broadcast operations which currently share UHF TV Channels 14-20 or will occupy Channels 60-69 in the future.^{7/} As to the NAB's argument that the DTV planning factors are "aggressive" and cannot be relied on until proven in actual practice,^{8/} these planning factors are the foundation of the entire DTV allotment table and are based on recommendations of an Advisory Committee that toiled long and hard over them, including gathering test data in both the laboratory and the field.^{9/} Except for an adjustment for adjacent channel conditions, there has been no change in the planning factors since the *Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87-268.^{10/} If these factors are not valid, then the entire national DTV plan is open to question, and perhaps the DTV transition should be deferred or slowed

^{7/} See Comments of Motorola and the Association of Public-Safety Communications Officials-International, Inc. The question of whether land mobile use of television broadcast channels should remain the same or be increased or decreased in the future is an issue to be debated another day in another proceeding.

^{8/} NAB Comments at p. 5.

^{9/} The NAB was a full participant in these efforts.

^{10/} 11 FCC Rcd 10968 (1996). The *Sixth Further NPRM* was adopted almost two years ago.

down. NAB has not so proposed, and it should not be able to challenge the planning factors for one purpose while accepting them for another.^{11/}

Other Issues To Be Resolved

9. Several commenters who operate LPTV stations and/or translators, while wholeheartedly supporting the concept of a "Class A" television station, have indicated their disagreement with some aspects of CBA's proposal. Again, none of these disagreements is a reason to delay the initiation of further proceedings.

10. Impact on Translators. The National Translator Association ("NTA"), again while not objecting to the Class A proposal, is especially concerned about the impact of Class A status both on existing and proposed translators and on improvements to translator facilities. CBA appreciates NTA's overall support and wishes to cooperate to the maximum extent possible with its translator brethren, with whom it shares many common interests and experiences. CBA recognizes the importance and value of both translators and LPTV stations that will not achieve Class A status for one reason or another. CBA does not propose that a Class A station be permitted to displace, or to cause increased interference to, any existing translator or LPTV station. The only questions are what will happen when a Class A application conflicts with an application by a translator or an LPTV station that has not achieved Class A status and whether Class A stations should be able to file applications to improve their facilities without waiting for general LPTV-translator application filing windows. CBA believes that local programming is sufficiently important that an application by a Class A station should prevail over an application

^{11/} It should be noted that no one has challenged use of the planning factors as the basis for anticipated applications by full power DTV stations seeking to increase power.

by an LPTV station or translator, without competitive bidding or other comparative proceedings.^{12/} It also believes that Class A stations should be permitted to file for facilities increases at any time, even if the Commission retains a window system for LPTV and translator stations. CBA recognizes the special importance of translators which provide the only network service to rural localities but believes that in rural areas, it is unlikely that it will not be possible to accommodate a Class A application without blocking other LPTV or translator service.^{13/} Once again, however, this is an issue to be resolved during the rule making and not a reason to reject CBA's proposal.

11. Class A Interference Requirements. CBA has already noted above that it proposes that Class A stations be subject to the same interference standards that apply to other stations under Part 73, including standards governing Part 73 waiver requests. It also clarifies here that a ban on interference should never disqualify a station from achieving Class A status if there will be no increase in the amount of interference caused or received by the authorized facility prior to applying for Class A status.^{14/} Finally, there should be no bar on interference agreed to by

^{12/} CBA does not propose, however, to give Class A facilities improvement applications priority over LPTV and translator displacement applications filed by June 2, 1998.

^{13/} CBA would not object to a procedure whereby a conflict between a Class A and an LPTV or translator application were approached first by requiring the applicants to search for other usable channels and requiring one or more of them to amend to different channels rather than simply dismissing a translator or LPTV application in favor of an application by a Class A station. Class A priority would then apply only as a last resort, when there is no reasonable alternative. CBA believes that the last resort should occur only rarely, if at all, if parties work together in good faith.

^{14/} LPTV stations forced to locate temporarily outside the "core" Channels 2-51 should also be able obtain Class A certification immediately, even if their spectrum protection does not become effective until they move within the core, regardless of how long it takes them to find a place in the core.

all affected parties;^{15/} and Class A stations, like LPTV and translator stations, should be permitted to accept interference.^{16/}

12. Minimum Grade of Service. CBA initially proposed that Class A stations be required to provide interference-free service over their entire community of license. Some operators objected because of difficulty covering a geographically large community, given LPTV power limits. This problem will be ameliorated by the new increased power limits approved for LPTV stations in the *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588, 14656 (1997). Class A stations should also be permitted to achieve compliance with coverage requirements by specifying a recognized section of a larger political entity as the community of license.^{17/} There are other possible approaches, including requiring a minimum required power and antenna height instead of coverage of the community of license; authorizing Class A status if a station's interference-free contour falls entirely or nearly entirely over its community of license; or requiring coverage of 50%, 80%, or some other percentage of the community of license.^{18/} CBA continues to believe that a Class A station should be required to cover all or

^{15/} As spectrum usage becomes increasingly intensive with the advent of digital broadcasting and the truncation of the TV spectrum, private agreements with regard to interference are likely to become an important part of all broadcast application processes. Except where the result is excessive degradation of existing service to the public, the Commission should honor private agreements.

^{16/} Acceptance of interference may sometimes go too far, resulting in unacceptably poor service to the public. That issue should be dealt with in the context of minimum signal coverage requirements for LPTV stations, discussed *infra*, not by limiting interference received generally.

^{17/} For example, a station in New York City could request licensing to one of the boroughs, such as Manhattan or The Bronx, so that its signal would adequately cover all or most of its community of license.

^{18/} A related proposal was made by John Kompas and Jackie Biel, who proposed a new market definition, other than ADI or DMA, for Class A stations.

most of its community of license with an interference-free signal, but all of the foregoing approaches should be considered and debated in a formal rule making proceeding.

13. Local Programming. CBA has proposed that Class A stations be required to broadcast a minimum amount of locally produced programming. Commenters have questioned whether local programming should be required at all, when local programming must start, the scope of the geographic area deemed "local", and whether credit should be given to minority programming or programming produced by a distant primary station whose signal is repeated by a translator. CBA anticipates continuing debate over these issues, but it still believes that local programming is at the heart of the value the Commission should seek to preserve in granting Class A status. Thus while it would not object to credit for any programming the Commission deems appropriate, it does not actively support an exception for non-local minority or primary station programming, nor does it actively support credit for any kind of programming not produced in the Class A station's service area. Qualifying programming should either be produced within the area reached by the Class A station's signal or should pertain directly to events and institutions within that area.^{19/} CBA also believes that a Class A applicant should establish a track record of complying with Part 73^{20/} and providing local programming prior to applying for Class A status, rather than only promising to comply afterwards, to avoid the administrative burden of an after-the-fact verification procedure.

^{19/} Thus there should be no question that coverage of high school sports where the local school is playing an away game qualifies, even if the game is played outside the station's service area, as does televising meetings of political bodies of the county or state with jurisdiction over the Class A station's service area, even if those meetings occur outside the service area.

^{20/} Claims that LPTV stations seek primary status without bearing the regulatory "burdens" faced by full power stations (*see, e.g.,* Comments of NAB at p. 3) are unjustified, as CBA has proposed that Class A stations be required to comply with virtually all Part 73 requirements.

Conclusion

14. The Commission rarely receives the degree of individual licensee participation in a rule making that it has received here.^{21/} LPTV licensees have told a powerful story of efforts to achieve many of the public interest goals the Commission has set for the broadcasting industry, and they have explained why their currently regulatory status is impeding their achievement of those goals. Every effort has been made by CBA not to obstruct the transition by the full power industry to DTV operation, even though many LPTV stations provide more innovative and local services than their full power counterparts and unfortunately will still be displaced. There is a serious problem, however, that adversely affects the public interest and that the Commission cannot reasonably ignore. The areas of disagreement that have come to light can be resolved. Therefore, CBA urges the Commission to go forward on an expedited basis with a *Notice of Proposed Rule Making* and a final resolution of the rule making CBA has requested.

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June 8, 1998

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^{21/} Proceedings affecting Amateur Radio industry may be an exception.

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, do hereby certify that I have, this 8th day of June, 1998, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply Comments of the Community Broadcasters Association" to the following:

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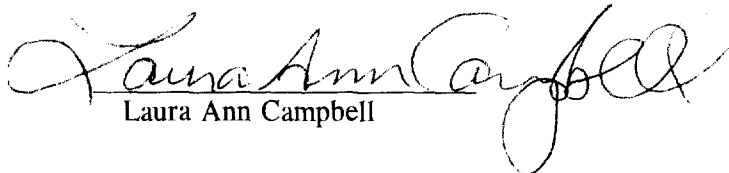
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